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## KLINE v. KLINE'S CREDITORS.

November 23, 1904.

[48 S. E. 882.]

FRAUDULENT CONVEYANCES—TRANSACTIONS BETWEEN HUSBAND AND WIFE—  
TRUSTS IN FAVOR OF WIFE—BURDEN OF PROOF—EVIDENCE—SUFFICIENCY.

1. In a contest between the creditors of a husband and the wife, the burden is on the wife to show by clear and satisfactory evidence the *bona fides* of transactions with her husband.
2. The mere holding of a bond against the husband by the wife is not sufficient evidence, as between her and the husband's creditors, that at the time the bond purports to have been given it was recognized as a debt, and that both husband and wife intended to occupy the relation to each other of debtor and creditor.
3. If a trust in land held by a husband can be created by parol in favor of his wife, as against his creditors, the declaration creating it should be established by convincing testimony.
4. Evidence that the wife's money was used in paying for land conveyed to her husband was insufficient to establish a trust in her favor in such land, where the deed to the land was made directly to the husband at the time of the purchase in 1879, the cash payment being then made by him, and the bonds for deferred payments being taken up by him when paid, and marked in his own handwriting as paid, and not transferred to the wife, or indorsed or delivered to her in any way, and where no deed of trust or other security was ever given her, and where she asserted no claim against her husband until the institution, in 1896, of a suit by the creditors to reach the land—especially in face of the positive assurance of the husband to the creditors, made before the debts were contracted, that he was the fee-simple owner of the land, and that it was free from incumbrances.

## ALLEMONG et al. v. AUGUSTA NATIONAL BANK et al.

November 23, 1904.

[48 S. E. 897.]

## CONTRACTS—INDEPENDENT COVENANTS—CONSTRUCTION.

1. On a settlement of a conveyance of land claimed to be invalid the purchaser surrendered a portion of the land, with its right to recover the part of the price paid, and the vendors surrendered their right to enforce the balance of the contract, and certain of their number executed an acquittance to the purchaser of an independent indebtedness due them. A further agreement was made between the vendors that the property surrendered by the purchaser should be held by a trustee for the vendors' benefit, and should be sold for \$100,000, or, by consent of all parties, for less; the proceeds to be distributed, first, in satisfaction of the individual indebtedness so released, and the balance to be distributed *pro rata*. Held that, where the sale authorized by the agreement was never made, an action would lie in equity to compel a sale of the property and a distribution of the proceeds by first paying the amount of indebtedness released by certain of the vendors, and then a division of the balance *pro rata*.